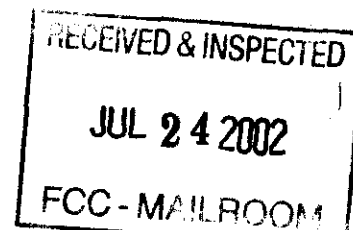


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of )

Amendment of Section 73.202(b) )

Table of Allotments, )

FM Broadcast Stations. )

(Los Banos and Planada, California) )

MB Docket No. 02-186

RM-10494

### NOTICE OF PROPOSED RULE MAKING

**Adopted: July 3, 2002**

**Released: July 19 2002**

Comment Date: September 9, 2002

Reply Comment Date: September 24, 2002

By the Assistant Chief, Audio Division:

1. The Audio Division considers herein a petition for rule making filed on behalf of Buckley Communications, Inc. ("petitioner"), license of FM Station KHTN, Channel 284B, Los Banos, California, requesting the reallocation of Channel 284B from Los Banos to Planada, California, as that community's first local aural transmission service, and modification of its authorization accordingly. Petitioner stated its intention to apply for Channel 284B if it is reallocated to Planada, as requested.

2. Petitioner's request is filed pursuant to the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>1</sup> In support of the proposal petitioner states that the requested use of Channel 284B at Planada (pop. 4,369),<sup>2</sup> is mutually exclusive with its current authorization at Los Banos (pop. 25,869), as no change in transmitter site is proposed. Additionally, petitioner claims that its proposal would result in a preferential arrangement of allotments consistent with the Commission's allotment priorities.<sup>3</sup> In this regard, petitioner advises that since it does not propose to relocate the transmitter site of Station KHTN, no white or grey areas would result (priorities one and two). Further, petitioner claims that the reallocation of Channel 284B from Los Banos to Planada would provide the latter community with its first local service (priority three), whereas Los Banos will retain local aural transmission service provided by Stations KQLB(FM), Channel 295A, as well as fulltime AM Station KLBS (priority four).

<sup>1</sup> See Report and Order in MM Docket No. 88-256 ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O").

<sup>2</sup> Population figures reported herein were taken from the 2000 U.S. Census data.

<sup>3</sup> The FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters (co-equal weight is given to priorities (2) and (3).) See, *Revision of FM Assignment Policies and Procedures ("Revision")*, 90 FCC 2d 88 (1982), *recon. denied*, 56 RR 2d 448 (1983).

3. Additionally, petitioner advises that Station KHTN currently provides a city grade (70 dBu) signal to 100% of the Merced Urbanized Area. As the requested change in community of license from Los Banos to Planada does not involve a change in transmitter site to provide service to the latter community, petitioner avers that a *Tuck* analysis is not required to demonstrate Planada's independence from its urban neighbor.<sup>4</sup> See *Boulder and Lafayette, Colorado*, 11 FCC Rcd 3632 (1996), and *East Los Angeles, et al., California*, 10 FCC Rcd 2864 (1995). Petitioner also provided demographic information to establish that Planada is a *bona fide* community for allotment purposes under the Commission's allotment criteria,<sup>5</sup> that has a need for a first local aural transmission service.

4. A staff engineering analysis has determined that no gain or loss areas are associated with this reallocation request as no transmitter site relocation for Station KHTN is proposed. Our analysis also reveals that the proposed 60 dBu contour at Planada will provide service to 315,542 persons in an area of 8,560 square kilometers. Moreover, we have determined that Station KHTN presently provides a 70 dBu signal over 100% of the Merced, California, Urbanized Area. Therefore, based upon the degree of coverage presently provided by Station KHTN over the noted urbanized area, we find that the petitioner's reallocation request is not subject to the provision of additional information to demonstrate Planada's independence from the urbanized area.

5. In consideration of the above, we believe the petitioner's proposal warrants consideration as the reallocation could provide Planada with its first local aural transmission service without depriving Los Banos of local aural transmission service. Therefore, we shall propose to modify the petitioner's license for Station KHTN to specify Planada as its community of license. Pursuant to the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 284B at Planada, California, nor require the petitioner to demonstrate the availability of an additional equivalent channel for use by such parties.

6. Channel 284B can be allotted to Planada consistent with the technical requirements of Sections 73.202(b)(1) and 73.315(a) of the Commission's Rules, at the petitioner's currently authorized transmitter site at coordinates 37-11-29 NL and 120-32-03 WL. This site is located 22.2 kilometers (13.8 miles) southwest of Planada, the coordinates of which are 37-17-27 NL and 120-19-03 WL.

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<sup>4</sup> See *Huntington Broadcasting Co. v. F.C.C.*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc. ("KFRC")*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck ("Tuck")*, 3 FCC Rcd 5374 (1988). In *KFRC* and *Tuck*, the Commission clarified the type of evidence to consider in determining whether a suburban community deserves a first local service preference by relying on three factors: signal population coverage; size of the suburban community relative to the adjacent community; and the interdependence of the suburban community with the central city.

<sup>5</sup> Petitioner states that Planada is a Census Designated Place ("CDP"), that has numerous commercial businesses, schools, medical facilities, churches, community organizations, recreational facilities, a post office, and social organizations, and deserves to have its own first local broadcast service, citing *Avon, North Carolina*, 14 FCC Rcd 3939, 3940 (1999); *Thermopolis and Story, Wyoming*, 16 FCC Rcd 13066 (2001); *Arcadia and Fort Meade, Florida*, 12 FCC Rcd 10223 (1997); and *Semora, North Carolina*, 5 FCC Rcd 934 (1990)a.

7. In light of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Los Banos, California	284B, 295A	295A
Planada, California	--	284B

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before September 9, 2002, and reply comments on or before September 24, 2002, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW; TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Martin R. Leader, Esq.  
David D. Oxenford, Esq.  
Colette M. Capretz, Esq.  
Law Offices of Shaw Pittman  
2300 N Street, N.W.  
Washington, DC 20037-1128

10. Parties who chose to file by paper must file an original and four copies of each filing. Filings may be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46

FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment, which has not been served on the petitioner, constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment that has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257), at its headquarters, 445 Twelfth Street, SW., Washington, D.C.